

LAKE COUNTY BOARD of ADJUSTMENT
September 10, 2014
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Sue Laverty, Paul Grinde, Steve Rosso, Don Patterson, Frank Mutch

STAFF PRESENT: LaDana Hintz, Robert Costa, Jacob Feistner, Lita Fonda

Sue Laverty called the meeting to order at 4:03 pm.

For the July 9, 2014 minutes, Steve offered two corrections. On pg. 1 in the first sentence of the Korenberg-Baker item, 'application' changed to 'applicant'. On pg. 11 of in the last sentence of the first paragraph, 'had been' changed to 'should be'. Sue Laverty offered a correction on pg. 10, when in the third line of the last paragraph, the first 'as' was removed.

Motion made by Paul Grinde, and seconded by Don Patterson, to approve the July 9, 2014 meeting minutes as amended. Motion carried, all in favor.

For the August 13, 2014 minutes, Steve noted that 'Cost' should be 'Costa' in the first line of the Serra item on pg. 1. On pg. 3 in the last sentence of the second full paragraph, Steve corrected 'need from' to 'need for' and Robert corrected 'step' to 'steps'. On pg. 4 in the third full paragraph, Steve changed 'over the top' to 'from the river' and corrected the second sentence in the first long paragraph on pg. 5 from 'get the packet' to 'get in the packet'.

Motion made by Steve Rosso, and seconded by Paul Grinde, to approve the Aug. 13, 2014 meeting minutes as amended. Motion carried, 4 in favor (Paul Grinde, Steve Rosso, Don Patterson, Frank Mutch) and 1 abstention (Sue Laverty).

TALMADGE/ IVERSON VARIANCE—CITY-COUNTY (4:08 pm)

Robert Costa presented the staff report. (See attachments to minutes in the Sept. 2014 meeting file for staff report.) He noted public comment from Kent Anderson was received after the staff report was published. This letter had been handed out to the Board. (See attachments to minutes in the Sept. 2014 meeting file for handout.) The letter included a number of concerns and was opposed to the variance requests.

Frank asked about the 17-foot setback instead of the 10-foot setback, as suggested by staff. Was the house too big for the impervious surface? Robert explained that he couldn't find a reason to allow for the increased coverage so the staff findings addressed that there didn't appear to be a hardship to allow for that. The applicants didn't own the property right now. If they needed something that was bigger than what was allowed within the regulations, they could consider purchasing another lot. The property currently was developed with less than what would be the maximum lot coverage so it

appeared to be reasonable to use it within that amount. Frank said it could have a bigger house but not as big as proposed. Robert said that was what staff suggested based on review of the criteria.

Paul confirmed with Robert that the receipt of a buffer plan would be required prior to issuance of a zoning conformance permit and was in the staff recommendation.

Sue asked what the current lot coverage was, given that 20% was allowed. Robert replied it was about 17.4%.

Erik Iverson spoke on behalf of his family's application. They had two kids. He clarified that this was a 3-bedroom home they were considering, not a 5-bedroom home. After speaking to Susan (Environmental Health) and looking at the lot, the existing drainfield and what their needs really were, there was no need to go through the rigmarole for more bedrooms. Three bedrooms would be fine for what they wanted to do. The existing house was 30 feet from the lake. They wanted to move it back and revegetate. He spoke regarding the 17-foot width the staff recommended and the 10-foot width the applicants requested. They laid out a plan for something they thought would work in talking with their builder. He viewed that as give-and-take. There was an existing detached garage near the property line. They would remove that, attach the garage and move back from the lake if they could get the 10-foot setbacks. They were looking at the deck as well as the square footage of the house. He understood where the staff was coming from. They were trying to work with them to find something that made sense. They wanted a safe home. The current home wasn't safe. They planned to remove a shed. The dock there was not a flow-through dock and they wanted to get rid of that. There were improvements to be made, but they were also asking for exceptions to the rules. They were trying to be fair and reasonable to find something that worked.

Steve asked if a well was still planned. Erik affirmed. Steve mentioned a 100-foot setback from a septic field. From the site plan, it looked like they'd have to put that on one side or the other of the house. With only 10 feet between the house and the boundary line, they might not have access to that. Did that work? Erik said they spoke with their realtor and Susan, who walked the property as well. He noticed the staff recommendations included getting an engineer. They didn't know that was a requirement. They would do that. The thought was [the well] would be towards the front of the house. There was a deck where the current house was located. It would be in front of that and slightly to the north. He'd been told that was the ideal spot to put that well. It wouldn't necessarily be on the side in the 10-foot setback. It was more towards the front and the north portion of the lawn.

Steve asked what happened when the pump went out and they had to get the rig in there to pull the waterline and the pump out. Erik said there was a type of piping they could use that could be yanked out without a truck. The well could be manually taken out with the design their builder was putting in. Steve commented he had neighbors on the lake who built before zoning was in place. They had a very narrow setback. Probably once a year, they needed to get some piece of equipment into their yard. Their solution was to

ask the neighbors for access. Erik noted that in this spot, even if you had willing neighbors, there still wouldn't be access there. That was where conversations with Mark Nunlist, their builder, and Susan [of Environmental Health] came in. He thought Mark had that [problem] remedied, since Mark knew there wasn't access there.

Steve asked what the existing buffer looked like. Erick said it was grass with a gentle slope into the lake, with some large rocks, akin to rip rap. Steve asked if they'd thought what kind of buffer they'd like to put in. Erik said they hadn't, although there'd been discussions about what that might look like. They were willing to do what was recommended. They were sensitive to the erosion issues. They wanted to do what made the most sense in terms of protecting the shoreline.

Public comment opened:

Creta Webb: As an adjacent neighbor, she had access concerns. She pointed out that the two pieces of property delineated on the map she was sent were landlocked. The only way of accessing that property was across her property. The private drive shown was incorrectly drawn. She owned the two flag lots. She described the private drive as going along the north boundary line and across the hill on her property then around and through Kent Anderson's property to the subject property. The existing road was an old little dirt road that over the years had become somewhat fragile. The runoff that came down the road had eroded it to the extent that she was concerned about the kind of construction equipment and various large vehicles that would have to cross her property and hill in order to get there. There wasn't a lot of room since the dirt road had a steep bank on each side. The road was about 8 feet wide, which was enough for one passenger vehicle. There were lots of big trees hanging over the road at the top of the hill. That meant vehicles of height, even a tall motor home, had trouble getting through her property in order to get to the subject property. She felt the access wasn't really viable for what would be required to build a house of this size. The traffic thus far had been for the three pieces of property, which totaled 6 somewhat older adults. With children and their friends and construction traffic, she thought they might have a congestion problem. Given that this would be a pretty big house on the lake, especially with two stories, it would also impact her view.

Steve confirmed with Creta that both of her lots were developed with separate dwellings. He asked if they had separate driveways or if they used this same road that wrapped around. Creta said the house she used had a separate road. The other house used the top of the road that adjoined Rocky Point Road. Steve checked that three residences used that road for access. Creta said there were four residences. Two were on her properties. Steve checked that one of her two houses had its own drive, so one of her houses plus two houses on lots he indicated were the three houses that used the road that wrapped around. Creta said this was correct.

Steve observed an easement along the north edge of one of Creta's properties was shown on the plat that was possibly meant for access. This road didn't stay on that easement. Creta affirmed this.

LaDana passed around an aerial photo.

For the record, Robert mentioned [Steve] was correct about where that road showed up on the map. The parcel boundaries from state data were skewed south. Steve agreed the property lines needed to slide over. Sue indicated where the platted easement seemed to be. Robert noted there was an additional easement that didn't show up. It showed up on the parcel on a plat but it didn't show up on that one.

Sue repeated there were three houses accessed from that road, and one that was accessed directly. She checked that the current two-story house didn't impinge the view. Creta said the current house was one story and a loft. It didn't impede. Sue said it looked like two stories in the picture.

Frank asked if there was a maintenance agreement on the road with the neighbors. Creta said there was not. It had been verbal. Sue strongly suggested the neighbors consider getting together and writing a road maintenance agreement for the private road. For future reference, when properties sold and changed, [it would help more than] a handshake and a verbal agreement. Her subdivision had a lot of private roads. There wasn't a written road agreement and it could be quite contentious.

Kent Anderson: He owned the property to the south. There had been several lawsuits on [this] deal and the road easement deal. He referred to the papers he'd given them.

Sue noted they did have a road maintenance agreement. Kent asked if he should read his submitted comment. Sue suggested that he give a brief overview.

Kent: They'd been on the property for 33 years. They had septic issues over those years until they put in a sand mound system in. They were designed for a 3-bedroom house. When they went to Planning, they got floor plans for a 6-bedroom house that wouldn't work on this property. Where you drove into the other property and garage, there was just enough room to back out of the garage and turn around. There wasn't room for construction equipment, trucks or parking. Through the lawsuit that had been filed against [his family] and the neighbors, neither neighbor would let anybody on that property park on their properties. They are landlocked.

Steve said when the lot was originally split, there was one traditional septic system that was used by both houses. Kent said when the lot was split, they cut the septic system spigot off for the south half lot. The south half lot never used that after it was split but they drained their sewage on the south half lot for probably 20 years before the new system was put in. Steve said each lot now had its own totally independent system within its own property boundaries. Kent said that was correct, but the drainfields tied in together. The sand dome went across the top of the property instead of stopping 10 feet from the property line and starting in another 10 feet. Steve checked that the pipes under the sand were not connected and Kent affirmed.

Public comment closed.

Don asked if the contractor looked at the road to see if, in fact, they could take equipment up there. Steve guessed it depended on whether the assumption was made that the neighbors would cooperate with equipment going through there or if they would be stricter with what the limits were on the easement. Paul commented it looked like it had been a contentious issue for some time. From the look of the road on the photo, Steve didn't know if the road was in the easement, which would be an issue, too.

Kent showed where the road was on a map, where it crossed his property and noted other features of the road on the map. Steve asked if he was confident it ran inside the easement. Kent spoke further about the map.

Mary Price brought to the Board's attention that her hand for public comment had been overlooked.

Public comment reopened:

Mary Price: She was the daughter of Jean Tallmadge. Regarding construction equipment, a drilling rig came down that very road yesterday to drill on the Anderson property. It was quite large. She thought the road could handle construction equipment. On the concern that the proposed new home would obstruct the view, right now there were trees that were probably 30 feet higher than the proposed house. You could see clearly over the lakeshore to the lake. Regarding the road easement, there was a legal agreement between her mother and both of these property owners for a legally protected easement. It did allow for any reasonable use: construction, family use, visitors. There were no limitations. They had those documents in front of them.

Public comment closed.

Steve said this lot was created before the zoning regulations that now govern it. It was a very small lot. He could see some justification to compromise between the current zoning regulations and what could be considered a reasonable variance. He also thought that with a small lot, it wasn't a place to build a big house. Over the years, 10-foot setbacks might be a real problem, even for the property owner. Whether they went 17 feet or 15 feet, it did sound reasonable. Another unknown was if they reduced the setback and a smaller house was designed, it might possibly fit within the 20% impervious surface coverage so that part of the variance might not be required.

Sue agreed that if you put the current zoning on that particular lot, which was a court-ordered subdivision, it created a minimally buildable lot, so she would be in favor of reducing the property line setbacks. Ten feet seemed pretty close. Fifteen or 17 feet would probably resolve the coverage issue in itself. She agreed with staff that the variance for lot coverage would not be the minimal relief that they could do.

Paul agreed with Steve: if you buy a small lot, build a small house. That house would really fill the lot up. This lot wouldn't be approved now. Obviously some sort of setback variance was needed. A smaller house might deal with the surface coverage.

Sue asked if Paul thought 17 feet would be adequate. Paul said he'd like to see something like 15. About 34 feet would be left. By the time eaves were added, you were down to a 30-foot structure. LaDana mentioned the eaves didn't count in this zoning district. Robert said it was from the outer wall.

Frank asked if the Iversons could live with a 15 to 17-foot setback. Erik thought 15 feet made some sense. He'd thought the eaves were a part of it as well. Frank asked if the contractor could live without setting foot on an adjacent property. Erik said he'd have to circle back to his contractor on those concerns since he wasn't here. [Mark] had built a lot of stuff along the lake and was familiar with the intricacies and challenges that went along with that. He'd talked about a staging area at another place off-site so there wouldn't be the issue of lots of vehicles in there. Erik knew [Mark] had thought ahead in terms of that. The height was at 27 feet.

Sue recognized Creta Webb, who suggested in the interest of full disclosure to Erik Iverson that both he and the builder look at the restrictions that were put on the adjacent property's use of the road before they made further decisions. They might not have access to that information. Various lawsuits had placed restrictions on adjacent property owners that he may or may not be able to comply with. Erik understood what she was saying. He saw Kent Anderson's letter this morning and there were things in there that gave him pause as a father. They might need to do a little more due diligence on that end of things. They'd started with what was fair and reasonable in terms of a setback to work through this process.

Sue recognized Kent Anderson, who said they built their house in 2006. They were limited to a 3-bedroom house the same size as hers, which was 24 x 48 feet. Steve asked about the setbacks. Kent said they could have the same setback as the neighbors. His cabin was only 24 feet wide. They were having a well drilled today and had a pain trying to get in there. Sue checked whether he'd been given 15-foot as stated in the letter or 17-foot setback as discussed here. Kent replied when he measured, it was 15 feet. He didn't want to say 15 feet when it wasn't. Steve asked if that was for the garage also. Kent said no, their garage was a separate building on the back lot with a 10-foot side setback. Robert clarified that when Kent Anderson received his zoning conformance, the planner at the time misunderstood the way the regulations were written. The regulations did allow for reduced setbacks without a variance if there were covenants that were effective. There weren't covenants in this subdivision. Unfortunately, that result wasn't the right way of doing things. That was how that occurred.

Sue thought 15 feet was reasonable. It was a little more than staff suggested but the setback was to the wall rather than the eaves, and that might work with the 17-foot setback. Steve thought the 17 feet came from the idea of grandfathering and the existing house. This was without the garage, which would push a grandfathered setback to 5 feet.

He wasn't strongly attached to the grandfathered idea. He thought they could pick a reasonable number. He was willing to consider 15-foot setbacks with a denial in the increase in impervious surface to 26% at this time and leaving it at 20%. It wouldn't exclude the applicant from redesigning things and seeing what happened then. In this zoning district, the entire lot was used for the basis of the impervious surface. They didn't have to separate the buildable area. There was a possibility that a smaller house would fit in the 20%. If it didn't, they could come back to the Board. He added that because of the size of the lot and the fact that the well drilling may be done close to the lake, under condition #11 he would specifically add well drilling to the construction. LaDana said that would be included without having to be written in.

LaDana reminded they might need to amend the findings if they changed the setbacks to 15 feet. Paul said he was thinking of eave line for the 15 feet. If they'd been talking eave line, they would still have 17 feet to the outside wall with a typical construction soffit. They could go with the 17 feet to the outside wall and avoid a bunch of haggling over.

Motion made by Sue Laverty, and seconded by Steve Rosso, to deny the variance to allow for 26% lot coverage, based on the findings of fact and staff analysis. Motion carried, 4 in favor (Sue Laverty, Paul Grinde, Steve Rosso, Don Patterson, Frank Mutch) and one opposed (Paul Grinde).

Motion made by Sue Laverty, and seconded by Paul Grinde, to approve the variance to allow for the modification of the property line setbacks as recommended by the staff with staff report and their findings of fact. Motion carried, all in favor.

LaDana suggested that the agenda order be switched since people were in attendance for the Ullman item but not for the Vandal item. The Board was agreeable.

ULLMAN CONDITIONAL USE—EAST SHORE (5:03)

Robert Costa presented the staff report. (See attachments to minutes in the Sept. 2014 meeting file for staff report.) He noted that Stan Converse was in attendance for Sunrise Builders and the engineer, Ryan Mitchell with Robert Peccia & Associates, was also here on behalf of the applicants. Robert corrected item #2 under Application Type on the top part of the first page of the staff report. The second conditional use related to the proposed guest house containing more than 1,000 square feet of living area. He mentioned that technical difficulties accounted for the lack of the inclusion of photos in the report. He relayed that the water supply was via Flathead Lake (pg. 13, item 13). Apparently there was a well, but Environmental Health told him the water source was lake water.

Don noted that his daughter lived near this property. He'd seen the property under a prior ownership. He asked if there was a road that went to the northern piece of the property. Ryan Mitchell said the road was shown on the map. Don asked if that was the gravel-like picture. Ryan said it went from pavement to gravel. It was hard to see in the photo.

Steve referred to the drawings, which Robert had mentioned weren't fully dimensioned or to scale so height couldn't be determined. The report said the height was fine. Which was correct? Robert said he misspoke. The height was a problem in that he didn't know what it was. He'd spoken with Ryan. They weren't able to get something in time for the report. The recommendation was written so the applicants would need to demonstrate that the height would comply with the 30-foot height requirement.

On pg. 12, item #10 in the last sentence, Steve remarked that the house was described as approximately 70 feet from the high water mark of Flathead Lake. On pg. 25, item 10, the distance was given as 57 feet. Eyeballing the plan, it looked like 70 feet was probably the closer number. On Sheet B (attachment 9), the high water mark elevation was called out at 2896. He thought it was 2897. LaDana said it was actually 2893. They noticed that. Robert said in essence, that gave them even more ability to be compliant. Steve said the dock wouldn't make sense. Ryan said when they surveyed with GPS, they knew the conversion from 2893 to the GPS elevation constraint. The high water mark was the same location. They were just using a different system. It was confusing. He listed a few different systems of data that were available. Steve checked that the relationship between the proposed structure and the zone of disturbance for the construction was realistic in the way it was drawn as far as scale and the distance from the lake. Ryan clarified that they used LiDAR, which was [paragraph]-based laser scanning, to generate the mapping contours for this.

Robert made a note to modify the setback approval statement if the Board decided to approve so it would be 70 feet from high water.

Ryan checked that the concern was with the disturbed area. They showed a much larger disturbed area because they needed equipment to get around the building. He thought that was the 57 feet. Robert said that was probably where the 57 feet was from. Ryan said on attachment 9, they had the structure in there but they calculated a much larger area to get around the house. Stan Converse referred to the dotted line around the structure. Sue summarized it should be 70 feet on pg. 25, item 10. The agents agreed.

Sue asked if the 2007 house disturbed slopes or not. Robert said the history was unclear. The approval seemed to be for both properties to essentially do disturbance activities and to locate on slopes over 25%. The approval didn't specify which development went where and did what. He thought the answer was yes. LaDana mentioned to keep in mind that the zoning regulations had also changed since that time.

Frank asked about the additional drainfield. Robert said [the applicants] proposed a separate drainfield to do this. It hadn't been approved yet. They would need to get a rewrite of their COSA. Sue confirmed with the planners that the Board wouldn't need to address that because Environmental Health would cover that. Steve said they could alternatively make one of the structures dependent.

Ryan Mitchell spoke on behalf of the applicants. They did a detailed computer modeling for the slopes. The computer shaded areas with slopes over 25%, which gave a weird-

looking image. The site was stable. They did groundwater monitoring at the proposed drainfield site. They also completed a DEQ rewrite and were within the standards as far as phosphorus breakthrough and non-degradation analysis. They had a DEQ-8 section where they addressed the stormwater through the COSA. They held back on submitting that information since it wasn't useful unless they got approval here. He noted they included an area around the building much larger than the footprint. The actual foundation was about 2600 square feet. It was essentially a daylight basement, a two-story house. The height wouldn't be an issue and they would submit the revised architectural plans. Within that area, they had about 4000 square feet that was over 25% slope, not the entire 9200-square foot area. He thought someone could easily not understand how the computer spit numbers at them.

Ryan returned to the DEQ rewrite. It addressed water, wastewater, solid waste and storm drainage. They had to address all those issues in the lot rewrite. They completed their analysis. Things were fine. They just had to submit it to both Environmental Health and DEQ for the joint application review. One reason they were doing a new drainfield was the previous approval of the wastewater and water systems neglected property lines. When the consultant submitted those and it was reviewed, they conveniently left off the property lines that showed this water and sewer was serving two independent lots so there were no easement or shared user agreements filed. They were going to clean that up as part of this project, even though it was a common ownership now. The property had to remain in common ownership given the way it was designed and developed. He spoke with DEQ and they would like that to be cleaned up. That would be a new certificate of survey, and they would file some easements and shared user agreements that would be referenced on the survey.

Ryan said the well shown on the site map actually served the building that was on the subject tract. He described how after they did their survey, they had the sewer system on one lot and indicated which buildings it served. The well was on the southern lot and served the building on the northern lot. As an engineer, he commented that during construction, they would put in BMP (best management practices) and erosion control in. More importantly to him was maintaining them. Often you'd see these put up for a 3-month or 5-month build and they were not maintained. His group would make sure these were not only installed but maintained. That was critical. He described what was required by the state for disturbances of one acre or more.

Steve asked about the existing vegetation along the shoreline between the high water mark and the proposed site. Ryan said currently it was primarily a gravel path. They looked at where they could fit the building with the least amount of disturbance to the actual vegetation. He referred to attachment 9. Steve asked about the vegetation in the 50-foot buffer. Ryan replied it was pretty much natural with some pebble beach. Stan Converse added it was really natural. You couldn't see the house from the lake. Many people commented that they really liked how it was originally built. They interviewed the landscaper (Jim Doepker) for the original owners (the Stones), who planted thousands of shrubs and hundreds of trees. The current owner wanted to carry that spirit forward and keep it natural. That was one of the reasons they bought it.

Public comment opened:

Don Murry, the Ullman's lawyer, introduced himself. He was helping with the documents Ryan mentioned so the two lots could have an agreement for their shared amenities and to protect the water and the well protection zones.

Public comment closed.

Frank and Don were ready to proceed with a motion. Robert reiterated that he would include the modification for the 70 feet [on pg. 25, item 10.a].

Sue checked for board discussion. Steve could see why they wouldn't want to combine the two lots into one. He asked if it was clear in condition #2 that the documentation was required in condition #5. Robert said he felt comfortable with the way this was written. The applicants would provide plans.

Motion made by Frank Mutch, and seconded by Don Patterson, to approve the conditional use and variance requests with staff recommendations and conditions from the staff report. Motion carried, 4 in favor (Paul Grinde, Steve Rosso, Don Patterson, Frank Mutch) and 1 abstention (Sue Lavery).

VANDAL VARIANCE—UPPER WEST SHORE (5:33 pm)

LaDana Hintz presented the staff report. (See attachments to minutes in the Sept. 2014 meeting file for staff report.)

Public comment: No public remained to comment.

Steve suggested corrections to conditions. In condition #2 on pg. 17, 'be' was eliminated from 'with the be plans' in the first sentence. On pg. 18 in condition #9, the redundancy of 'shall be shall be' was slimmed to 'shall be', 'Ata' was changed to 'At a' and 'shall established' was changed to 'shall be established'. In condition #12, 'responsible from' was corrected to 'responsible for'.

Frank turned to attachment 5. It didn't show or mention the length of the garage. On the site plan this was 26 feet.

Steve commented it looked like if they moved the garage to comply with the zoning regulations, slope above 25% might be disturbed. That would require a conditional use. LaDana added they would possibly be in bedrock and blasting. Steve agreed the variance seemed like a good solution. LaDana noted the natural area located next door wasn't going to be developed. [The applicant] was going to manage his storm water on his lot. The architectural control committee of the subdivision was approving this.

Motion made by Steve Rosso, and seconded by Frank Mutch, to approve the variance with staff recommendations, conditions and findings of fact, with the typographic corrections. Motion carried, all in favor.

OTHER BUSINESS

LaDana introduced new planner Jacob Feistner. He described his background at the Board's request. Staff updated the Board that items for next month had been received.

Sue Lavery, chair, adjourned the meeting at 5:50 pm.